



Atty. Dkt. No. 024018-0105

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant: Han Oh PARK *et al.*
Title: MICROORGANISMS FOR
TREATMENT OR PREVENTION
OF CORPULENCE AND DIABETES
MELLITUS, AND
PHARMACEUTICAL
COMPOSITION CONTAINING
THE SAME

Appl. No.: 09/855,836

Filing Date: 05/16/2001

Examiner: WARE, DEBORAH K.

Art Unit: 1651

#11
D.93
9/5/02

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

Sir:

This is in reply to the Office Action mailed July 30, 2002.

Applicants hereby provisionally elect the claims of Group I, claims 1-15, drawn to microorganism and composition, for prosecution in the subject application. Applicants, of course, reserve the right to file divisional applications covering the subject matter of the non-elected claims.

The claimed inventions of Group I and Groups II-III are related as product and process of use. According to MPEP § 803, if "the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." Applicants contend that this is the case in the present application. However, the examiner has not shown that it will be a serious burden to examine the claims of Groups II and III concurrently with the claims of Group I. Thus, applicants believe that

searching and examining all of the claims of Groups I, II and III would not place an undue burden on the examiner.

Finally, even if the restriction between Group I, and Groups II and III is proper for purposes of initial examination, the PTO is obliged, under the doctrine set forth in *In re Ochiai*, to rejoiner of the claims of Groups II and III upon a finding of allowability of the claims of Group I.

Accordingly, Applicants respectfully request that the examiner reconsider the restriction requirement of Group I, II and III, and examine all of the claims for the reasons set forth.

Receipt of the initial Office Action on the merits is awaited.

Respectfully submitted,

Date 29 August 2002

By S. A. Bent

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Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s) hereby petition for any needed extension of time.